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10/727,173	12/02/2003	Alan P. Lemke	100205072-1	5971

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EXAMINER

LEE, JOHN W

ART UNIT

PAPER NUMBER

2624

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/04/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/727,173	<b>Applicant(s)</b> LEMKE, ALAN P.	
	<b>Examiner</b> John Wahnkyo Lee	<b>Art Unit</b> 2624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 2 December 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>20031202</u> . | 6) <input type="checkbox"/> Other: _____  |

***Information Disclosure Statement***

1. Initialed and dated copy of Applicant's IDS form 1449-Paper No. 20031203, is attached to the instant office action.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-3, 9-10, 17-19, 22-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Cohen et al. (2005/0030315).

Regarding claim 1, Cohen discloses using a still camera (fig. 1-192) to capture an image stack that is a set of identically sized registered images (page 5, paragraph [0059]) to easily combine individual images into an enhanced composite image (page 1, paragraph [0008]). It is readily apparent that the still camera used for Cohen is a digital camera, for the camera is connected to a computer to generate and manipulate digital images. Cohen's invention can also employ removing unwanted objects from images (abstract).

Regarding claims 2 and 3, Cohen invention can control the portion of the images such as the function of Mat filters for creating new images from combination of images on the image stack (page 8, paragraph [0092]) and employ removing unwanted objects from images (abstract).

Regarding claim 9, Cohen discloses using a still camera (fig. 1-192) to capture an image stack that is a set of identically sized registered images (page 5, paragraph [0059]). It is readily apparent that the still camera used for Cohen is a digital camera, for the camera is connected to a computer to generate and manipulate digital images. It is well known from the ordinary skill in the art that the digital camera can store images in a memory, so the still camera used in Cohen's invention will be able to store images including the desired ones in a memory.

Regarding claim 10, Cohen discloses that the still camera is a stationary camera to capture images (pages 1, paragraphs [0009]-[0010]).

Regarding claim 17, Cohen discloses using a still camera (fig. 1-192), that is one of the embodiments of the computing system environment (fig. 1-100), to capture an image stack that is a set of identically sized registered images (page 5, paragraph [0059]). The computing system environment has a computer (fig. 1-110), a processing unit (fig. 1-120), and a system memory (fig. 1-130). Cohen's invention can have computer-executable instructions such as program modules including routines, programs, objects, components, and data structure to perform particular tasks or implement particular abstract data types to be executed by a computer (page 3, paragraph [0044]) or a computing device that is directed by the program modules of the

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computer program (claim 16). It is readily apparent that the still camera used for Cohen is a digital camera, for the camera is connected to a computer to generate and manipulate digital images. It is well known from the ordinary skill in the art that the digital camera can store images in a memory, so the still camera used in Cohen's invention will be able to store images including the desired ones in a memory. Moreover, it is readily apparent that computer program comprising instructions to implement the processing of the digital camera exists, for the camera disclosed in Cohen's invention is connected to system bus of the computing environment system via a camera interface (fig. 1-194).

Regarding claim 18, Cohen discloses a computer-implemented process that selects one of the original images in the image stack as a source image to be added to create a final composite image (claim 1). As Cohen's invention involves a computer-implemented process using a computer, it is readily apparent that the selecting and composing a final image will be executed by a computer program instruction.

Regarding claim 19, Cohen's invention can remove unwanted objects from images (abstract) and has computer-executable instructions such as program modules including routines, programs, objects, components, and data structure to perform particular tasks or implement particular abstract data types to be executed by a computer (page 3, paragraph [0044]) or a computing device that is directed by the program modules of the computer program (claim 16) that make readily apparent Cohen's invention will have computer program instructions for implementing the removal of an unwanted object from images.

Regarding claim 22, Cohen discloses using a still camera (fig. 1-192), that is one of the embodiments of the computing system environment (fig. 1-100), to capture an image stack that is a set of identically sized registered images (page 5, paragraph [0059]) and removing unwanted objects from images (abstract). The computing system environment has a computer (fig. 1-110), a processing unit (fig. 1-120), and a system memory (fig. 1-130). It is readily apparent that the still camera used for Cohen is a digital camera, for the camera is connected to a computer to generate and manipulate digital images. It is well known from the ordinary skill in the art that the digital camera can store images in a memory, so the still camera used in Cohen's invention will be able to store images including the desired ones in a memory. Moreover, it is readily apparent that there a computer program comprising instructions to implement the processing of the digital camera including storing the desired image exits, for the camera disclosed in Cohen's invention is connected to system bus of the computing environment system via a camera interface (fig. 1-194).

Regarding claim 23, Cohen discloses using a still camera (fig. 1-192), that is one of the embodiments of the computing system environment (fig. 1-100), to capture an image stack that is a set of identically sized registered images (page 5, paragraph [0059]). The computing system environment has a computer (fig. 1-110), a processing unit (fig. 1-120), and a system memory (fig. 1-130). The camera disclosed in Cohen's invention is connected to system bus of the computing environment system via a camera interface (fig. 1-194).

Regarding claim 24, "means for storing...", "means for controlling...", and "means for producing..." construe means plus function invoking 35 U.S.C. 112 sixth paragraph by meeting the 3-prong analysis. "Means for storing..." corresponds to memory subsystem (fig 6-330; page 7, paragraph [0080]) on the applicant's specification. "Means for controlling..." and "means for producing..." correspond to (fig. 6-310; page 7, paragraph [0079]) and (fig. 8-400; page 8, paragraph [0086]) on the applicant's specification, respectively. Cohen discloses using a still camera (fig. 1-192), that is one of the embodiments of the computing system environment (fig. 1-100), to capture an image stack that is a set of identically sized registered images (page 5, paragraph [0059]) and removing unwanted objects from images (abstract). It is readily apparent that the still camera used for Cohen is a digital camera, for the camera is connected to a computer to generate and manipulate digital images. It is well known from the ordinary skill in the art that the digital camera can store images in a memory and have a control button, so the still camera used in Cohen's invention will be able to store images and produce images including the desired ones to be stored in a memory.

Regarding claim 25, Cohen discloses using a still camera (fig. 1-192), that is one of the embodiments of the computing system environment (fig. 1-100), to capture an image stack that is a set of identically sized registered images (page 5, paragraph [0059]) and removing unwanted objects from images (abstract).

Regarding 26, it is readily apparent that the still camera used for Cohen is a digital camera, for the camera is connected to a computer to generate and manipulate digital images. So, it is readily apparent that the still camera discloses by Cohen will

have the deleting function, that the user can push to delete stored images, like any other digital camera has.

Regarding claim 27, Cohen discloses using a still camera (fig. 1-192) to capture an image stack that is a set of identically sized registered images (page 5, paragraph [0059]). It is readily apparent that the still camera used for Cohen is a digital camera, for the camera is connected to a computer to generate and manipulate digital images. Cohen invention can also control the portion of the images such as the function of Mat filters for creating new images from combination of images on the image stack (page 8, paragraph [0092]) and employ removing unwanted objects from images (abstract).

Regarding claim 28, Cohen discloses using a still camera (fig. 1-192) to capture an image stack that is a set of identically sized registered images (page 5, paragraph [0059]). It is readily apparent that the still camera used for Cohen is a digital camera, for the camera is connected to a computer to generate and manipulate digital images. It is well known from the ordinary skill in the art that the digital camera can store images in a memory, so the still camera used in Cohen's invention will be able to store images including the desired ones in a memory.

Regarding claim 29, as Cohen uses a still camera, which is apparently a digital camera for the reason discussed before, it will be able for the user to capture common image scene for each captured image of the image stack.

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***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4-8, 12-16, 20-21, 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen et al. (2005/0030315) in view of Giordan et al. ("Using Adobe Photoshop 5").

Regarding claims 4-6, as discussed before, Cohen discloses all the claim limitations of the previous claims except the detail claim limitation of claim 4. However, Adobe Photoshop 5.0 disclosed by Giordan has the function for the claim limitation of claim 4. It is well known from the ordinary skill in the art that Adobe Photoshop 5.0 is an image editing software that has a Rubber Stamp tool which can fill a hole left in the background after an object is removed. The Rubber Stamp tool is widely used for removing or retouching flaws such as blemishes, uneven skin tones, a pimple, mole, or a scar, and unwanted elements such as telephone wires, an unwanted bird in the sky, and a variety of other things. Giordan discloses that the Rubber Stamp tool of Adobe Photoshop 5.0 allows to remove image elements (chapter 30, pages 602-603) and to clone between files by opening the source file to set the source point, which is a portion of image, at the desired spot and the destination file to apply the Rubber Stamp tool effect (ch. 16, pages 305-307 and 309).

It would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to use Giordan's method in Cohen's system and method for image editing using an image stack to provide great solutions for image and pattern creation as suggested by Giordan (ch. 16, page 304).

Regarding claim 7-8, Giordan further discloses that the Rubber Stamp tool of Adobe Photoshop 5.0 can remove image elements (chapter 30, pages 602-603) and clone between files (ch. 16, pages 305-307 and 309).

Regarding claim 12, Cohen discloses using a still camera (fig. 1-192) to capture an image stack that is a set of identically sized registered images (page 5, paragraph [0059]) to easily combine individual images into an enhanced composite image (page 1, paragraph [0008]). It is readily apparent that the still camera used for Cohen is a digital camera, for the camera is connected to a computer to generate and manipulate digital images. However, Cohen does not disclose adding the desired image from the second image to the first image without having the desired image, but Giordan does by using Adobe Photoshop 5.0. It is well known from the ordinary skill in the art that Adobe Photoshop 5.0 is an image editing software that has a Rubber Stamp tool which can fill a hole left in the background after an object is removed. The Rubber Stamp tool is widely used for removing or retouching flaws such as blemishes, uneven skin tones, a pimple, mole, or a scar, and unwanted elements such as telephone wires, an unwanted bird in the sky, and a variety of other things. Giordan discloses that the Rubber Stamp

tool of Adobe Photoshop 5.0 allows to clone between files by opening the source file to set the source point, which is a portion of image, at the desired spot and the destination file to apply the Rubber Stamp tool effect (ch.16, pages 305-307 and 309).

It would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to use Giordan's method in Cohen's system and method for image editing using an image stack to provide great solutions for image and pattern creation as suggested by Giordan (ch.16, page 304).

Regarding claim 13, Cohen further discloses using a still camera (fig. 1-192) to capture an image stack that is a set of identically sized registered images (page 5, paragraph [0059]). It is readily apparent that the still camera used for Cohen is a digital camera, for the camera is connected to a computer to generate and manipulate digital images. It is well known from the ordinary skill in the art that the digital camera can store images in a memory, so the still camera used in Cohen's invention will be able to store images including the desired ones in a memory.

Regarding claims 14-16 Giordan further discloses that the Rubber Stamp tool of Adobe Photoshop 5.0 allows to clone between files by opening the source file to set the source point, which is a portion of image, at the desired spot and the destination file to apply the Rubber Stamp tool effect (ch.16, pages 305-307 and 309).

Regarding claims 20 and 21, as discussed before, Cohen discloses all the previous claim limitations of claims 17 and 19 except the detail claim limitations of claims 20 and 21. However, Giordan discloses the Rubber Stamp Tool of Adobe

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Photoshop 5.0. It is well known from the ordinary skill in the art that Adobe Photoshop 5.0 is an image editing software that has instructions to implement various functions interacting with computer hardware and a Rubber Stamp tool which can fill a hole left in the background after an object is removed. The Rubber Stamp tool is widely used for removing or retouching flaws such as blemishes, uneven skin tones, a pimple, mole, or a scar, and unwanted elements such as telephone wires, an unwanted bird in the sky, and a variety of other things. Giordan discloses that the Rubber Stamp tool of Adobe Photoshop 5.0 allows to remove image elements (chapter 30, pages 602-603) and to clone between files by opening the source file to set the source point, which is a portion of image, at the desired spot and the destination file to apply the Rubber Stamp tool effect (ch.16, pages 305-307 and 309).

It would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to use Giordan's method in Cohen's system and method for image editing using an image stack to provide great solutions for image and pattern creation as suggested by Giordan (ch.16, page 304).

Regarding claims 30-32, Cohen discloses all the claims limitations of claim 27 as discussed before, but not the detail claim limitations of claims 30-32. However, However, Giordan discloses the Rubber Stamp Tool of Adobe Photoshop 5.0. It is well known from the ordinary skill in the art that Adobe Photoshop 5.0 is an image editing software that has a Rubber Stamp tool which can fill a hole left in the background after an object is removed. The Rubber Stamp tool is widely used for removing or retouching

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flaws such as blemishes, uneven skin tones, a pimple, mole, or a scar, and unwanted elements such as telephone wires, an unwanted bird in the sky, and a variety of other things. Giordan discloses that the Rubber Stamp tool of Adobe Photoshop 5.0 allows to remove image elements (chapter 30, pages 602-603) and to clone between files by opening the source file to set the source point, which is a portion of image, at the desired spot and the destination file to apply the Rubber Stamp tool effect (ch.16, pages 305-307 and 309).

It would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to use Giordan's method in Cohen's system and method for image editing using an image stack to provide great solutions for image and pattern creation as suggested by Giordan (ch.16, page 304).

6. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen et al. (2005/0030315) in view of Weiss (US 6,996,287).

Regarding claim 11, as discussed before, Cohen discloses all the claim limitations of claim 1 except the claim limitations of claim 1. However, Weiss discloses method and apparatus for texture cloning allowing for cloning the texture from one image into another image (col. 2, lines 41-45). The texture information from the source image may be combined with the filtered target image to generate a destination image (col. 2, lines 53-56). Texture information is extracted by computing the difference between the filtered and original values (col. 2, lines 59-63). The target image can be

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filtered one or more times through a combination of one or more filters and combined with texture information to be obtain a destination image (col. 3, lines 2-5).

It would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to use Weiss's method in Cohen's system and method for image editing using an image stack to improve image data processing (col. 1, lines 16-17).

### **Conclusion**

7. No claims are allowed.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Wahnkyo Lee whose telephone number is (571) 272-9554. The examiner can normally be reached on Monday - Friday (Alt.) 7:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jingge Wu can be reached on (571) 272-7429. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO

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Customer Service Representative or access to the automated information system, call

800-786-9199 (IN USA OR CANADA) or 571-272-1000.

John W. Lee

  
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SUPERVISORY PATENT EXAMINER